

ASARCO - RUSTON

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BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION
EPA REGION 10, 1200 SIXTH AVENUE
SEATTLE, WASHINGTON

IN THE MATTER OF:

ASARCO INCORPORATED,

Respondent.

Proceeding Under
Section 106(a) of
the Comprehensive
Environmental Response,
Compensation, and Liability
Act of 1980, 42 U.S.C.
§ 9606(a), as amended by
the Superfund Amendments and
Reauthorization Act of 1986.

EPA Docket NO. 1088-03-18

ADMINISTRATIVE ORDER ON
CONSENT FOR RUSTON EXPEDITED
RESPONSE ACTION AT PUBLICLY
ACCESSIBLE LOCATIONS

I. INTRODUCTION

1. This Administrative Consent Order ("Consent Order") is issued to ASARCO Incorporated ("Asarco") by the United States Environmental Protection Agency ("EPA") pursuant to Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), 42 U.S.C. § 9606(a), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), 100 Stat. 9613 (1986). By signing this Consent Order below, Asarco consents to issuance of the Order and agrees to undertake all actions required by the

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1 terms and conditions hereunder.

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3 II. JURISDICTION

4 2. This Consent Order is issued pursuant to the
5 authority conferred on the President by Section 106(a) of
6 CERCLA, 42 U.S.C. § 9606(a), as amended; delegated to the
7 Administrator of the EPA by Executive Order 12580, dated January
8 23, 1987, 52 Fed. Reg. 2923 (January 29, 1987); and further
9 delegated to the EPA Regional Administrators and the EPA
10 Assistant Administrator for Solid Waste and Emergency Response
11 by the EPA Delegations Manual Sections 14-14, 14-14-A and
12 14-14-C. This authority is conferred on the EPA Region 10
13 Director, Hazardous Waste Division, by Regional Redeflegation
14 Order signed by the Regional Administrator.

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16 III. EPA NOT BOUND TO ACT

17 3. Any conduct by EPA described herein by means of
18 the words "will," "expects to," "shall," etc., does not create a
19 promise, undertaking, or any legal duty on the part of EPA.
20 Instead, any such expressions indicating an act or omission
21 contemplated on the part of EPA, shall operate only as a
22 condition precedent to a duty of Asarco to perform some act or
23 refrain from acting, as appropriate under the terms of this
24 Order.

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IV. JUDICIAL REVIEW

4. In accordance with Section 113(h) of CERCLA, 42 U.S.C. § 9613(h), as amended, Asarco waives its right to seek judicial review of EPA's issuance of this Order.

V. PURPOSES

5. In entering into this Consent Order, the mutual objectives of EPA and Asarco are:

A. To develop and implement a Response Action Plan for the performance of appropriate EPA-approved response actions (hereinafter an "Expedited Response Action") at publicly accessible locations or properties within the Town of Ruston and North Tacoma, Washington, as set forth in the attached Scope of Work and Site Activity Schedule (Attachment A).

B. To accomplish the foregoing in a manner not inconsistent with the National Contingency Plan ("NCP") (40 C.F.R. Part 300) in effect on the date of this Order and as amended, and with CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986, and applicable EPA guidance documents or policies.

VI. FINDINGS OF FACT

Based upon information available to it, EPA hereby makes the following Findings:

6. Asarco, a New Jersey Corporation, owns a former

1 primary copper smelter located in Ruston, Washington. The
2 smelter originally began operations in 1890 as a lead smelter
3 under the ownership of the Tacoma Smelter Company. Copper
4 production began in 1902. In 1905 the smelter was purchased by
5 Asarco. In 1911 lead smelting was discontinued in favor of
6 copper smelting. Asarco operated the copper smelter until it
7 ceased copper smelting operations permanently on March 24, 1985.

8 7. Asarco owns approximately 97 acres of land
9 bordering on Puget Sound, adjacent to the town of Ruston, and
10 nearby urban area of Tacoma, Washington. Asarco's former copper
11 smelting complex occupies approximately 67 of the 97 acres.

12 8. The custom copper smelting operation at Asarco's
13 Ruston smelter resulted in several by-products, including, but
14 not limited to, arsenic trioxide and heavy metals.

15 9. During the period from 1912 until 1985 when
16 Asarco ceased copper smelting operations, the Asarco copper
17 smelter in Ruston generally operated 24 hours a day, 7 days a
18 week, except for limited periods of meteorological curtailment
19 and closures, and produced approximately 70,000 tons of anode
20 copper annually.

21 10. Approximately in 1969, Asarco established an
22 ambient air monitoring network around the smelter complex to
23 monitor suspended particulates including arsenic.

24 11. During the period of its operation as a copper
25 smelter, and subsequent thereto, soil samples collected from the
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1 Asarco smelter complex and the nearby Ruston and North Tacoma
2 area, have shown the presence of arsenic and other heavy metals.

3 12. Hazardous substances, pollutants or contaminants,
4 including arsenic and other heavy metals have been released from
5 the smelter complex by air pathways. Arsenic and other heavy
6 metals transported by fugitive dust emissions have been
7 deposited on plants, buildings, and soil at the smelter complex
8 and surrounding area, including the Town of Ruston and North
9 Tacoma (the "facility" as defined in paragraph 26).

10 13. The terrestrial organisms and human population in
11 nearby residential areas in Ruston and the surrounding area are
12 possible receptors of any hazardous substances, pollutants or
13 contaminants, including arsenic and other heavy metals released
14 from the smelter complex.

15 A. Human exposure to arsenic or its derivatives
16 can result from the consumption of food or water containing
17 arsenic, the inhalation of arsenic in air or in contaminated
18 particles, the ingestion of soil and dust particles containing
19 arsenic, and skin absorption through direct contact.

20 B. Arsenic compounds may affect humans in a
21 variety of ways, depending on the route of exposure (air, water,
22 food), the concentration of arsenic and its chemical form. The
23 concentrations of arsenic inhaled by humans may depend on, but
24 is not limited to, climatic conditions, particle size of the
25 transported material, and the proximity of the individuals to
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1 the site.

2 C. Arsenic exposure has been linked to
3 increased incidence of human lung, and skin cancer.

4 D. Studies in other areas have shown that
5 arsenic compounds may affect humans in other ways. Health
6 effects may include either acute or chronic responses. Typical
7 acute symptoms include gastro-intestinal and cardiovascular
8 reactions while chronic symptoms include lesions of the skin,
9 damage to the nervous system, effects on the cardiovascular
10 system, and neoplasms.

11 14. On September 10, 1986, EPA issued an
12 Administrative Order on Consent to Asarco for its performance of
13 a Remedial Investigation and Feasibility Study (RI/FS) to (1)
14 determine fully the nature and extent of the threat to the
15 public health or welfare or the environment caused by the
16 release or threatened release of hazardous substances,
17 pollutants or contaminants from the site (the Remedial
18 Investigation) and (2) to evaluate alternatives for the
19 appropriate extent of response actions including any necessary
20 smelter complex site stabilization activities to prevent or
21 mitigate the migration or release or threatened release of
22 hazardous substances, pollutants, or contaminants from the
23 Asarco smelter complex (the Feasibility Study). The September
24 1986 Consent Order is incorporated by reference in this Order
25 and attached hereto as Attachment B. Pursuant to the 1986
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1 Consent Order, Asarco prepared an RI/FS Work Plan for
2 performance of the RI/FS, which was incorporated by reference
3 into the 1986 Consent Order and attached thereto as Attachment B.

4 15. On November 19, 1986, EPA and Asarco entered into
5 a "First Amendment to RI/FS Work Plan," which amended the
6 previous Work Plan schedule to provide Asarco additional time to
7 complete the fourteen (14) tasks required by the RI/FS Work Plan.

8 16. On February 19, 1988, EPA and Asarco entered into
9 a "Second Amendment to RI/FS Work Plan," which further amended
10 the work plan schedule for Asarco's performance and completion
11 of the RI/FS tasks 3, 4, 6, 8, 9, 10, 11, 12, 13, and 14.

12 17. Pursuant to the September 10, 1986, Consent
13 Order, Asarco further agreed to conduct the evaluation and
14 implementation of Initial Remedial Measures (IRM) for the
15 removal and/or containment of contaminated soils, groundwater,
16 and/or other contaminated materials with regard to Asarco's
17 planned demolition and smelter complex site stabilization
18 efforts. Asarco's performance of such activities are set forth
19 in a "Site Stabilization Plan," incorporated by reference in the
20 September, 1986 Consent Order and attached thereto as Attachment
21 A.

22 18. EPA and Asarco have subsequently entered into
23 three (3) amendments to the Site Stabilization Plan, on January
24 30, 1987, April 8, 1987, and January 11, 1988, providing for
25 additional demolition and removal activities of certain
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1 buildings and structures at the smelter complex. Asarco
2 satisfactorily completed the Initial Remedial Measures in
3 October 1987.

4 19. The Ruston/Vashon Arsenic Exposure Pathway Study
5 (March 31, 1987) documented elevated levels of arsenic in soils,
6 air, and household dust and resuspended outdoor dust in the
7 vicinity of the Asarco smelter. This study also reported the
8 presence of elevated levels of urinary arsenic in children
9 contacting housedust and soil contaminated with arsenic.

10 20. The Final Endangerment Assessment, Ruston/Vashon
11 Island (September 1988) evaluated current and future exposures
12 and human health risks from residual arsenic in communities
13 surrounding the Asarco smelter. This study concluded that if
14 exposures to existing elevated levels of arsenic in soil
15 continue over an extended period there exists a potential
16 lifetime cancer risk significantly above the EPA recognized
17 acceptable risk level.

18 21. The Draft Urinary Arsenic Survey, North Tacoma,
19 Washington (May 1988) concluded that a relationship exists
20 between elevated urinary arsenic in some children living within
21 one-half mile of the Asarco smelter and their exposure to soil.
22 The study also documented that urinary arsenic levels in area
23 children have been declining, since the completion of the
24 Ruston-Vashon Exposure Pathway Study in 1987 and implementation
25 of recent site stabilization activities at the Asarco facility.
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1 22. Soil sampling conducted in Ruston by the
2 Department of Ecology (April 1988) has verified elevated levels
3 of arsenic and other heavy metals in soils within one-half mile
4 of the Asarco smelter.

5 23. On September 29, 1988, EPA publicly announced the
6 proposed Ruston Expedited Response Action and CERCLA
7 Administrative Order on Consent. A public meeting was held in
8 Ruston on September 29 during which EPA representatives answered
9 questions and responded to comments from the public. Pursuant
10 to paragraph 90 of this Order, EPA requested additional public
11 comments on the proposed action and Consent Order. EPA accepted
12 such comments through November 4, 1988. In response to such
13 comments, including those received from the Ruston Town Council,
14 EPA requested that Asarco perform additional soil sampling at
15 several sites set forth in Attachment A to this Consent Order.
16 This sampling was performed to determine the extent of arsenic
17 contamination in soil at depths of three, six, and twelve inches
18 below the surface, since the April, 1988 soil data was limited
19 to surface sampling. This additional soil data was also
20 necessary to assist EPA in determining the extent of the soil
21 removal and capping activities, as well as the need for future
22 maintenance and controls at the eleven sites addressed by this
23 Order as set forth in Attachment A.

24 24. Between October 14 and October 17, 1988, Asarco's
25 contractor, Kennedy/Jenks/Chilton, performed additional soil
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1 sampling at a variety of locations on five of the eleven sites
2 (sites numbers 6, 8, 14, 17 and 19) listed in Attachment A to
3 this Consent Order. As described in Attachment C to this
4 Consent Order, the results of this soil sampling indicated that
5 for three of these five sites (sites numbers 6, 8 and 14),
6 arsenic contamination in soils exceeded 1,000 ppm at depths of
7 six and twelve inches. The data from these three sites also
8 indicated that in some instances, levels of arsenic were greater
9 at depths of six and twelve inches than in previous samples
10 taken at a depth of one inch in April, 1988. All but one of
11 these sites (number 19), had levels of arsenic greater than
12 250 ppm at depths of both six and twelve inches. In addition,
13 one of the samples from site number six analyzed by Asarco
14 indicated 7,150 ppm of arsenic at a six inch depth, the highest
15 arsenic concentration in Ruston area soil discovered to date.

16 25. Asarco does not admit any findings of fact and
17 specifically denies Finding of Fact Number 13.

18 VII. CONCLUSIONS OF LAW

19 Based upon the foregoing Findings of Fact and the
20 information available to it, EPA hereby makes the following
21 Conclusions of Law:

22 26. The Ruston area and North Tacoma within the study
23 area as depicted on Attachment D to this Consent Order,
24 including the Asarco smelter complex, is a "facility" as defined
25 in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), as amended.
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1 27. Asarco is a "person" as defined in Section 101(2)
2 of CERCLA, 42 U.S.C. § 9601(2), as amended.

3 28. Certain substances described in the Findings of
4 Fact, including arsenic and other heavy metals, are hazardous
5 substances, pollutants or contaminants, as defined in Sections
6 101(14) and 101(33) respectively, of CERCLA, 42 U.S.C. §
7 9601(14) and § 9601(33), as amended.

8 29. The presence and potential migration of hazardous
9 substances, pollutants, or contaminants found in the soil,
10 water, and other locations at the facility, constitute an actual
11 or threatened "release" into the "environment," as those items
12 are defined in Sections 101(22) and 101(8) respectively, of
13 CERCLA, 42 U.S.C. § 9601(22), and § 9601(8), as amended.

14 30. Pursuant to Section 106(a) of CERCLA, 42 U.S.C. §
15 9606(a), the presence of, and potential migration of hazardous
16 substances, pollutants, or contaminants at the facility may
17 present an imminent and substantial endangerment to the public
18 health or welfare or the environment because of an actual or
19 threatened release of such substances.

20 31. Asarco is the owner and operator of the Tacoma
21 smelter from which the release occurred and is subject to
22 liability as a responsible party pursuant to Section 107(a) of
23 CERCLA, 42 U.S.C. § 9607(a), as amended.

24 32. Asarco is a person who, with respect to the
25 facility, is liable to the United States to reimburse the United
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1 States or the state of Washington for all costs of removal or
2 remedial action, including the Expedited Response Action
3 ("response actions") incurred by the United States or the state
4 of Washington which are not inconsistent with the National
5 Contingency Plan or CERCLA, as amended by Superfund Amendments
6 and Reauthorization Act of 1986.

7 33. Asarco does not admit and specifically denies all
8 Conclusions of Law.

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10 VIII. STIPULATIONS

11 34. By the signature appearing below, Asarco hereby
12 consents and agrees solely for purposes of this Consent Order:

13 A. To issuance of this Consent Order;

14 B. To perform and comply with all provisions of
15 this Consent Order;

16 C. To refrain from disputing either federal
17 jurisdiction or the general authority of EPA to issue this
18 Consent Order;

19 D. That in any proceeding brought by EPA to
20 enforce this Consent Order, the only issues to be litigated
21 shall be those relating to Asarco's compliance with this Order
22 and performance of its terms and conditions; and

23 E. To waive any rights Asarco may have, as
24 provided in 42 U.S.C. § 9606(b)(2), to seek reimbursement of
25 funds expended pursuant to this Consent Order from the Hazardous
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1 Substance Response Trust Fund.

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3 IX. EXPRESS DENIAL

4 35. Subject to the provisions of this paragraph,
5 Asarco consents and agrees to the terms of this Consent Order,
6 and to perform and comply with all provisions herein. Further,
7 Asarco consents to and agrees not to contest EPA's and the
8 State's jurisdiction concerning this Consent Order. Said
9 consent shall not constitute, however, an admission by Asarco of
10 any legal or factual matter set forth in this Consent Order or
11 in any work plan or other document prepared or utilized by EPA
12 or the State pursuant to this Consent Order. By signing this
13 Consent Order, Asarco does not admit, accept, or acknowledge any
14 liability or fault with respect to the conditions at or arising
15 from the facility, as defined in paragraph 26, supra, or with
16 respect to any matter arising out of or relating to the
17 conditions at or arising from the facility. Furthermore, by
18 signing this Consent Order, Asarco does not waive, except for
19 Asarco's consent to jurisdiction for purposes of entry and in
20 any proceeding to enforce this Consent Order, any claim or
21 defense that it might have raised to this Consent Order or that
22 it might raise in any other judicial or administrative
23 proceeding brought by EPA, the State, or any other governmental
24 agency or private person. Asarco shall not contest the issuance
25 of this Consent Order, which shall be issued without trial or
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1 adjudication of any issue of law or fact.

2 36. This Consent Order is not to be construed, and
3 will not be construed, to any extent or for any purposes,
4 however and whenever arising, as an admission of liability or
5 violation of any private contract or instrument or of any local,
6 State, or Federal ordinance, rule, regulation, or statute,
7 directly or indirectly, on the part of Asarco, its agents,
8 officers, directors, shareholders, parent or subsidiary or
9 affiliated corporations or entities, predecessors, successors,
10 or assigns. Nor shall this Consent Order be admitted into
11 evidence or used in any way, directly or indirectly, in any
12 judicial or administrative proceeding or in any other manner
13 against Asarco for any purpose other than in further proceedings
14 by the parties hereto to enforce the terms of this Consent
15 Order; provided, however, nothing herein shall preclude Asarco
16 from using the Consent Order or the fact of its entry in a
17 proceeding against any third party, for contribution or for the
18 recovery of costs expended in complying with or implementing the
19 work provided for in this Consent Order.
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21 ORDER

22 Based upon the foregoing, it is hereby ORDERED as
23 follows:
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X. WORK TO BE PERFORMED

37. Pursuant to Section 106(a) of CERCLA, 42 U.S.C., 9606(a), as amended, Asarco shall: prepare and submit a Response Action Plan for the Ruston Expedited Response Action at the publicly accessible locations or properties ("sites") within the Town of Ruston identified in Attachment A. The Response Action Plan shall address the cleanup, removal, permanent disposal and/or treatment of hazardous substances, pollutants, and contaminants at the sites identified in Attachment A which have been released from the Asarco Tacoma smelter. The Response Action Plan shall be completed by Asarco in accordance with the attached Scope of Work and Site Activity Schedule (Attachment A). In accordance with the Scope of Work, Asarco's Response Action Plan shall include a Quality Assurance Plan; Temporary Waste Storage and Disposal Plan; and Health and Safety Plan for the cleanup of hazardous substances, pollutants, and contamininants located at the publicly accessible locations or properties identified in Attachment A.

38. The Response Action Plan shall, in accordance with the Scope of Work, detail the necessary actions for performing the Ruston Expedited Response Action which are intended to adequately address the threat or potential threat posed by the release or threatened release of hazardous substances, pollutants or contaminants in the Ruston area. The Response Action Plan shall be consistent with the attached Scope

1 of Work and shall set forth the methods which will be used to
2 accomplish the Expedited Response Action. Asarco shall submit
3 the final Response Action Plan to EPA, and shall, subject to
4 EPA's approval, perform and implement the Response Action Plan
5 to conduct the Ruston Expedited Response Action.

6 39. Upon EPA's written approval of Asarco's Response
7 Action Plan, the Response Action Plan shall be incorporated by
8 reference to this Order, and attached hereto as Attachment E.
9 Upon their approval by EPA, the Quality Assurance Plan, and
10 Temporary Waste Storage and Disposal Plan shall be considered
11 integral parts of the Response Action Plan and shall be
12 incorporated by reference in this Order.

13 40. As described in the attached Scope of Work,
14 Asarco shall promptly place all materials excavated as required
15 by the Response Action Plan in on-site temporary storage.
16 Asarco shall subsequently permanently dispose and/or treat all
17 excavated materials in a manner approved by EPA in accordance
18 with the schedule established for remedial design and remedial
19 action following completion of the smelter site feasibility
20 study and issuance of the EPA Record of Decision for the Tacoma
21 smelter site pursuant to the 1986 EPA Consent Order No.
22 1086-04-24-106. In order to implement this requirement, the
23 on-site permanent disposal and/or treatment options available to
24 Asarco shall be addressed in the RI/FS currently being performed
25 by Asarco and scheduled for completion in September, 1989,
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1 pursuant to the 1986 EPA Consent Order No. 1086-04-24-106. To
2 avoid any inconsistencies, the 1986 Consent Order and the
3 attached Work Plan shall be amended no later than thirty (30)
4 days from the effective date of this Consent Order, to address
5 on-site permanent disposal and/or treatment of excavated
6 material required by this Order. The amendment shall specify
7 that the RI/FS address the feasibility and specific design of a
8 RCRA-equivalent on-site land disposal facility. Asarco shall
9 permanently dispose and/or treat all materials excavated
10 pursuant to the provisions of this Consent Order regardless of
11 whether Asarco elects to perform the final remedial action for
12 the Tacoma smelter site as set forth in the EPA Record of
13 Decision pursuant to the 1986 EPA Consent Order No.
14 1086-04-24-106.

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16 XI. CONSISTENCY WITH NATIONAL CONTINGENCY PLAN

17 41. All of Asarco's actions undertaken pursuant to
18 this Order shall be in accordance with Subpart F of the National
19 Contingency Plan (40 C.F.R. Sections 300.61-300.71) in effect on
20 the date of this Order and as amended, and with CERCLA, as
21 amended by the Superfund Amendments and Reauthorization Act of
22 1986.

23 XII. DESIGNATION OF PROJECT COORDINATORS

24 42. Not later than five (5) days after the effective
25 date of this Order, Asarco and EPA shall each designate a
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1 Project Coordinator and a substitute. EPA shall also designate
2 an On-Scene Coordinator, who may, but need not be, the Project
3 Coordinator. Each Project Coordinator shall be responsible for
4 overseeing his principal's duties concerning the implementation
5 of this Order. To the extent possible, all communications
6 between EPA and Asarco (including communication by letter,
7 reports, notices, etc.) concerning activities related to this
8 Order shall be directed through Asarco's Project Coordinator and
9 EPA's Project Coordinator and/or On-Scene Coordinator.

10 43. Asarco's Project Coordinator shall be a qualified
11 and competent person with experience in hazardous waste site
12 investigations and having the skills necessary to direct and
13 supervise the activities under this Order. Prior to
14 commencement of activities at the sites listed on Attachment A
15 to this Consent Order, Asarco shall notify EPA in writing of:

16 A. the name, title, qualifications, and
17 background of the individual selected as the Project Coordinator
18 mentioned above; and

19 B. the name, address, qualifications, and
20 proposed scope of work for all contractors and subcontractors
21 expected to be used in performing activities to carry out the
22 provisions of this Order. If Asarco wishes to use additional
23 contractors and subcontractors subsequent to commencement of
24 activities at the sites listed on Attachment A to this Consent
25 Order for an element of work which exceeds \$1,000, it shall
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1 notify EPA in writing of their names, addresses, qualifications,
2 and their proposed scope of work at least five (5) days prior to
3 hiring such contractors and subcontractors.

4 44. Asarco may change its Project Coordinator by
5 sending a written notification to EPA no later than five (5)
6 days before the date of such change. If Asarco wishes to change
7 its Project Coordinator, the written notification to EPA shall
8 contain the name, title, qualifications, and background of the
9 individual selected as Project Coordinator. EPA may change its
10 Project Coordinator and/or On-Scene Coordinator by sending a
11 written notification of such change to Asarco no later than five
12 (5) days before the date of such change.

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14 XIII. DESIGNATION OF ON-SCENE COORDINATOR

15 45. EPA will designate one or more persons as an
16 "On-Scene Coordinator" for the facility and activities mentioned
17 in this Order, who shall have the authority specified and
18 indicated in the National Contingency Plan as set forth in 40
19 C.F.R. Part 300, as amended. Nothing in this Order shall be
20 construed to diminish that authority. If the On-Scene
21 Coordinator determines that conditions at the sites listed on
22 Attachment A to this Consent Order may present an immediate and
23 significant risk to public health, welfare, or the environment,
24 the On-Scene Coordinator may take any actions to abate such
25 risks as specified in the National Contingency Plan, including
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1 ordering cessation of work, conducting any task required by this
2 Order, and taking any appropriate response action. The EPA
3 On-Scene Coordinator may authorize minor field deviations, which
4 shall be documented in writing and signed by both Asarco's
5 Project Coordinator and the On-Scene Coordinator within five (5)
6 working days of such authorization.

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8 XIV. ABSENCE OF EPA COORDINATOR(S)

9 46. The absence of the EPA Project Coordinator and/or
10 On-Scene Coordinator from the sites listed on Attachment A to
11 this Consent Order shall not constitute an excuse for halting
12 the work required under this Order.

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14 XV. REPORTING

15 47. Asarco shall deliver to EPA and the Washington
16 Department of Ecology ("Ecology") monthly written progress
17 reports concerning the activities implemented under this Consent
18 Order. At a minimum, progress reports shall describe in
19 reasonable detail: (1) all of Asarco's actions at the sites
20 listed on Attachment A to this Consent Order, including those
21 which have been taken toward carrying out the tasks required by
22 this Order; (2) all actions scheduled for the next month; (3)
23 any problems or other information related to Asarco's
24 implementation of this Order and what steps Asarco has taken or
25 intends to take to correct any such problems. Asarco shall
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1 submit these reports to EPA and Ecology every month by the tenth
2 (10) day of each month following the effective date of this
3 Order, except that Asarco shall have no less than ten (10) days
4 to submit the first monthly progress report.

5 48. Asarco shall provide to EPA and Ecology all
6 reports, items, or other deliverables according to the Site
7 Activity Schedule set forth in the attached Scope of Work, or
8 any amended schedule agreed upon in writing by Asarco and EPA.
9 EPA shall approve in writing all reports and deliverables
10 specified in the attached Scope of Work. Asarco shall not
11 implement any tasks required to be approved by EPA prior to
12 EPA's written approval of such submittals, nor may Asarco deem a
13 task complete until EPA has approved Asarco's submittal of a
14 final report.

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16 XVI. EPA NOTICE OF DISAPPROVAL REGARDING REPORTS AND ACTIVITIES

17 49. The EPA Project Coordinator and/or On-Scene
18 Coordinator will notify Asarco in writing within thirty (30)
19 days of receiving any progress, preliminary, draft, or final
20 report or other items or deliverables required to be approved by
21 EPA as set forth in the attached Scope of Work, of (1) each
22 activity, deviation, or delay recited in such reports, to which
23 EPA has an objection, (2) each portion of such reports EPA
24 regards as deficient, and (3) the appropriate directions to
25 implement EPA's requirements. EPA will set forth in writing in
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1 reasonable detail its reasons for any such objections and
2 necessary revisions. Failure of EPA to object to any of
3 Asarco's reports, activities, deviations, or delays within
4 thirty (30) days of such receipt or notice shall not constitute
5 a waiver of EPA's right to object at a later time.
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7 XVII. DISPUTE RESOLUTION

8 50. In the event of EPA disapproval, in whole or in
9 part, of any plan, proposal, report or other deliverable
10 required pursuant to this Consent Order, EPA will specify any
11 disapproval or objection in writing. Asarco shall then
12 implement EPA's decision or directive as set forth in writing or
13 shall invoke the dispute resolution mechanism set forth in the
14 following paragraph.

15 51. If Asarco disagrees, in whole or in part, with
16 any EPA disapproval or other written decision or directive,
17 Asarco shall state its objections and the basis therefore
18 in writing within fourteen (14) calendar days after receipt
19 of EPA's disapproval, decision or directive. EPA and Asarco
20 shall then have an additional seven (7) calendar days from EPA's
21 receipt of Asarco's objections to attempt in good faith to
22 resolve the dispute. If agreement is reached, the resolution
23 shall be reduced to writing, signed by the parties and
24 incorporated into this Consent Order. If agreement is not
25 reached on any such dispute within this seven (7) day period,
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1 EPA shall provide a written statement of its decision to
2 Asarco. Within seven (7) days after receipt of EPA's written
3 statement, Asarco shall advise EPA in writing whether Asarco
4 will implement EPA's decision or directive as set forth in the
5 written statement. If Asarco fails or refuses to carry out the
6 directions or make the amendments specified by EPA's written
7 statement, EPA may elect to carry out the directions or make the
8 amendments itself and/or take any other actions it deems
9 necessary consistent with this Order or its statutory
10 authority. Implementation of these dispute resolution
11 procedures shall not stay EPA's right to assess applicable
12 stipulated penalties nor provide a basis for delay of any other
13 activities required by this Order, unless the EPA Project
14 Coordinator or where appropriate, the On-Scene Coordinator,
15 agrees in writing to a schedule extension.
16

17 XVIII. AVAILABILITY OF DATA

18 52. Asarco shall submit the results of all sampling
19 and/or tests and other data (including QA/QC data) generated by
20 Asarco, or on its behalf, with respect to the sites listed on
21 Attachment A to this Consent Order and/or implementation of this
22 Consent Order, to EPA and Ecology within seven (7) days of
23 Asarco's receipt of the analysis.

24 53. At the request of EPA, Asarco shall provide, or
25 allow EPA and/or their authorized representative(s) to take,
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1 discrete, split, or duplicate samples collected pursuant to this
2 Order. Asarco shall provide notice to EPA not less than
3 one-week (seven days) in advance of any sample collection
4 activity.
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6 XVIX. SITE ACCESS

7 54. Asarco shall provide EPA, Ecology, and/or their
8 authorized representatives the authority to enter and move
9 freely about all portions of the smelter complex and the sites
10 listed on Attachment A to this Consent Order at all reasonable
11 times and upon reasonable notice for the purposes of, inter
12 alia: inspecting records and operating logs relating to work
13 undertaken pursuant to this Consent Order; reviewing Asarco's
14 progress in carrying out the terms of this Consent Order;
15 conducting such tests as EPA or Ecology deem necessary; using
16 camera, sound recording, or other documentary type equipment;
17 and, verifying the data submitted to EPA by Asarco. Asarco
18 shall permit such persons to inspect and copy all non-privileged
19 records, files, photographs, documents, and other writings,
20 including all sampling and monitoring data (not otherwise
21 provided to EPA pursuant to this Consent Order), pertaining to
22 the work undertaken pursuant to this Consent Order.

23 55. Asarco may assert a confidentiality claim, if
24 appropriate, covering part or all of the information requested
25 or obtained by EPA under this Consent Order pursuant to Section
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1 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), as amended, and
2 EPA's regulations governing confidentiality of business
3 information set forth in Part 2, subpart B of title 40 of the
4 Code of Federal Regulations. Such an assertion shall be
5 adequately substantiated when the assertion is made. Analytical
6 data shall not be claimed as confidential by Asarco.
7 Information determined to be confidential by EPA will be
8 afforded the protection specified in 40 C.F.R. Part 2, Subpart
9 B. If no such claim accompanies the information when it is
10 submitted to EPA, such information may be made available to the
11 public by EPA without further notice to Asarco.

12 56. To the extent that the tasks required by this
13 Order require access to property within the facility other than
14 land Asarco owns, including the sites listed in Attachment A to
15 this Consent Order, Asarco shall use its best efforts to obtain
16 access agreements for itself, its contractors and agents, EPA
17 and Ecology and their contractors and agents, from the present
18 owners or lessees as the need for such access may arise. Best
19 efforts as used in this paragraph shall include, at a minimum, a
20 certified letter from Asarco to the present owners of such
21 property requesting access agreements to permit Asarco, EPA and
22 Ecology and their authorized representatives to access such
23 property. In the event Asarco is unable to obtain access under
24 reasonable terms and conditions, EPA agrees, consistent with its
25 authority, to assist Asarco in obtaining access. Any such
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1 access agreements which are executed by Asarco and property
2 owners, shall be incorporated by reference into this Consent
3 Order.

4 57. The eleven sites listed in Attachment A to this
5 Consent Order, which are the subject of on-site CERCLA response
6 activities as set forth in this Order and attached Scope of
7 Work, are all either privately or publicly owned by persons or
8 entities other than Asarco. EPA has determined that it is
9 necessary to undertake removal actions at these eleven sites to
10 abate the release and threatened release of hazardous substances
11 into the environment, and to prevent the direct exposure and
12 contact by the public to arsenic contaminated soils. Asarco has
13 agreed, pursuant to the provisions of this Consent Order, to
14 perform the CERCLA response activities described in this Order,
15 attached Scope of Work (Attachment A), and EPA-approved Response
16 Action Plan. An intergral component of this action, however, is
17 the ability of Asarco to gain access to property it does not
18 own. It is therefore necessary for Asarco to enter into
19 individual access agreements with each owner of the sites listed
20 in Attachment A to this Consent Order.

21 58. Asarco shall first obtain preliminary or
22 temporary access agreements from the owners of the properties
23 identified in Attachment A as requiring response action for soil
24 sampling and other related preliminary construction design
25 activities necessary to perform the Expedited Response Action.
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1 In the event that within fourteen (14) days of the effective
2 date of this Consent Order, or EPA's approval of Asarco's
3 Response Action Plan, whichever occurs later, Asarco is not able
4 to obtain temporary site access to properties identified in
5 Attachment A to perform the initial soil sampling and related
6 preliminary construction design activities, Asarco shall notify
7 EPA promptly regarding both the lack of, and efforts to obtain,
8 such access.

9 59. Following the completion of its sampling and
10 related preliminary construction design activities and EPA's
11 approval of Asarco's Response Action Plan, Asarco shall use
12 reasonable and diligent efforts to obtain longer term access
13 agreements from the present owners or lessees of the sites
14 listed in Attachment A to this Consent Order to perform and
15 implement the on-site CERCLA response activities required by
16 this Order and the EPA-approved Response Action Plan. Each
17 longer term access agreement shall be effective until the
18 issuance of EPA's Record of Decision following completion of the
19 Ruston residential area RI/FS. It is the intention of EPA that
20 the Ruston area RI/FS will be initiated in the Spring of 1989,
21 and that EPA and Asarco will enter into negotiations for a
22 CERCLA Administrative Order on Consent to provide for Asarco to
23 perform this RI/FS. Pursuant to paragraph 60 of this Order,
24 each longer term access agreement shall include provisions for
25 care, maintenance, and monitoring of soil and vegetation caps
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1 during the period that the longer term access agreement is in
2 effect. The longer term access agreements shall further include
3 provisions which provide for access for EPA, Ecology, and their
4 authorized representatives to conduct any necessary sampling and
5 inspection to determine the effectiveness of the cap. The
6 long-term access agreements shall be attached to this Order and
7 incorporated by reference herein, and shall be binding on the
8 successors or assigns of Asarco and the property owners. In the
9 event that Asarco is not able to obtain such longer term access
10 agreements to perform and implement the on-site CERCLA response
11 activities required by this Order and EPA-approved Response
12 Action Plan, Asarco shall notify EPA promptly regarding both the
13 lack of and efforts to obtain such access. In the event Asarco
14 is unable to obtain such long-term access, EPA agrees,
15 consistent with its authority, to assist Asarco in obtaining
16 access.

17 60. The eleven sites at which the removal actions
18 will be undertaken have differing characteristics and conditions
19 which may influence the level of involvement the site owners
20 wish to allow Asarco to have regarding the care, maintenance and
21 monitoring of soil and vegetation caps on their property.
22 Subject to EPA's approval, Asarco and the site owners may
23 therefore allocate responsibility for care, maintenance and
24 monitoring of soil and vegetation caps in the longer term access
25 agreements so long as certain minimum requirements are met,
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1 including quarterly inspections, site drainage and erosion
2 controls, fencing and posting, cap maintenance and revegetation,
3 preventing third parties from disturbing the cap, and
4 notification of any cap disturbances. It is anticipated that in
5 the allocation of such responsibility Asarco shall be
6 responsible for quarterly inspections of each site, ensuring
7 that the sites drain properly, fencing and the posting of
8 warning signs as necessary to protect the sites from third party
9 activity that might disturb the caps, and cap maintenance and
10 revegetation as necessary due to natural causes or third party
11 activity. It is further anticipated that the site owner shall
12 be responsible for taking reasonable steps to ensure that third
13 parties do not disturb the cap, to notify Asarco and EPA in the
14 event that the cap needs maintenance, to take no action that
15 will cause a major disturbance to the cap without prior
16 notification to Asarco and EPA and approval by EPA, and to
17 undertake cap revegetation and maintenance as necessary due to
18 activities by the site owner which Asarco has not otherwise
19 agreed to perform.
20

21 XX. QUALITY ASSURANCE

22 61. Throughout all sample collection, transportation,
23 and analysis activities conducted in connection with this
24 proceeding, Asarco shall use procedures for quality assurance,
25 quality control, and for chain of custody in accordance with
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1 approved EPA methods. Asarco shall cause each laboratory it
2 uses to perform any analysis according to approved EPA methods
3 and to participate in a quality assurance/quality control
4 program equivalent to that which is followed by EPA and which is
5 consistent with EPA document QAMS-005/80. Asarco shall submit a
6 QA/QC plan to EPA for approval as part of its Response Action
7 Plan and prior to initiation of any field work or sampling
8 activities. Asarco shall ensure that EPA personnel and/or
9 EPA-authorized representatives are allowed access to the
10 laboratories and personnel utilized by Asarco for analyses.
11

12 XXI. RETENTION OF RECORDS

13 62. Asarco shall preserve, for a minimum of six (6)
14 years after completion of the matters required by this
15 Consent Order, all records and documents in its possession
16 or control, or which come into the control of its employees,
17 agents, accountants or contractors which relate to the work
18 performed pursuant to this Consent Order, despite any record
19 destruction policy to the contrary. Upon request by EPA,
20 Asarco shall make available to EPA such records or true copies
21 of any such records. Asarco shall further provide EPA
22 reasonable notice of its intent to destroy any such records
23 or documents after such six (6) year period. In the event
24 that Asarco notifies EPA that it intends to destroy any
25 such records or documents, it shall either transmit such
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1 records to EPA or provide EPA a time period of not less than
2 ninety (90) days to inspect and copy such records or documents.
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4 XXII. DELIVERY OF DOCUMENTS

5 63. Documents, including reports and other
6 correspondence, submitted pursuant to this Consent Order, shall
7 be delivered to the following persons at the address indicated,
8 and to such other persons as EPA may specify by written notice
9 sent to Asarco:

10 A. Two (2) copies of documents to be submitted to
11 EPA should be sent to:

12 Keith Rose
13 Superfund Branch (HW-113)
14 U.S. EPA, Region 10
1200 Sixth Avenue
Seattle, Washington 98101

15 B. Two (2) copies of documents to be submitted to
16 Asarco, Incorporated should be sent to:

17 Mr. C. E. Dungey
18 Asarco, Incorporated
P.O. Box 1677
19 Tacoma, Washington 98401

20 C. One (1) copy of documents to be submitted to
21 Ecology should be sent to:

22 Nigel Blakley
23 Washington Department of Ecology
PV-11
24 Olympia, Washington 98504
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1 XXIII. PROVISION OF OTHER DOCUMENTS

2 64. In addition to those reports and documents
3 specifically required by this Order, upon EPA's request and
4 subject to applicable privileges, Asarco shall provide EPA
5 within ten (10) days of such request, copies of: draft and
6 final plans, draft and final task memoranda, including memoranda
7 recording minor field modifications, recommendations for further
8 action, quality assurance memoranda and audits, draft and final
9 reports, raw data, field notes, laboratory analytical reports,
10 sample results, and any other documents which relate in any way
11 to the sites listed on Attachment A to this Consent Order,
12 including those pertaining to any studies relevant to, but not
13 specifically required by this Order.
14

15 XXIV. ADDITIONAL RESPONSE TASKS

16 65. EPA may, as it deems necessary consistent with
17 federal laws and regulations, determine that additional response
18 tasks, other than those set forth in the Response Action Plan,
19 are necessary for an adequate and thorough removal and cleanup
20 of hazardous substances at the sites listed on Attachment A to
21 this Consent Order. EPA shall afford Asarco the opportunity to
22 perform such tasks except in those areas where, in the judgment
23 of EPA, Asarco is not qualified to conduct the tasks, or when
24 the need to take immediate action precludes such opportunity.
25 Nothing in this Consent Order shall be deemed to require Asarco
26 to undertake such additional response actions.
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1 66. The actions undertaken by Asarco pursuant to the
2 terms of this Consent Order constitute an Expedited Response
3 Action and shall contribute to the maximum extent practicable to
4 the efficient performance of any long-term remedial action
5 performed at the facility as defined in paragraph 26 of this
6 Order, including those sites listed in Attachment A to this
7 Order. It is the intention of EPA and Asarco that the work
8 undertaken by Asarco to perform the Ruston Expedited Response
9 Action as set forth in this Consent Order, attached Scope of
10 Work, and EPA-approved Response Action Plan - - in conjunction
11 with the implementation of the long-term access agreements
12 pursuant to paragraph 59 of this Order - - will be a permanent
13 solution to any risks presented by the conditions at the eleven
14 sites being remediated and the four sites (site numbers 10, 11,
15 13, and 18) for which EPA has determined no action need be taken
16 because the arsenic soil level falls below the EPA action level.

17 67. Upon completion of the Ruston Expedited Response
18 Action and implementation of the provisions for the care,
19 maintenance, and monitoring of the cap and vegetation as set
20 forth in paragraphs 59 and 60 at the sites listed in Attachment
21 A to this Consent Order, the work undertaken by Asarco will be
22 inspected and evaluated by EPA as to determine if all of the
23 requirements of this Order, Scope of Work and EPA approved
24 Response Action Plan have been successfully met. EPA also
25 intends to evaluate the Ruston Expedited Response Action as part
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1 of the Ruston residential area RI/FS to be initiated in the
2 spring of 1989, to determine whether the action is an effective
3 permanent remedy. It is the intention of EPA that subject to
4 paragraph 68 below, no further activity by Asarco will be
5 required at these sites unless EPA determines that Asarco has
6 not fully complied with the requirements of this Order, attached
7 Scope of Work, or EPA-approved Response Action Plan, or unless
8 the response action is not protective of public health or the
9 environment.

10 68. EPA has determined that the removal of the top
11 three inches of contaminated soil and debris and subsequent
12 placement of a nine to twelve inch soil cap with a permanent
13 vegetative cover as required at the eleven sites listed in the
14 Scope of Work attached as Attachment A to this Consent Order,
15 should adequately prevent re-exposure of contaminated material
16 through incidental disturbances in the absence of major
17 disturbances such as excavation. However, as indicated by the
18 data from the soil sampling performed by Asarco in October,
19 1988, as described in paragraph 26 and Attachment C, significant
20 arsenic contamination above 250 ppm will remain in the soil at
21 depths of four to twelve inches after completion of the Ruston
22 Expedited Response Action. There will thus remain the potential
23 that future major disturbances at the sites listed on Attachment
24 A to this Consent Order may cause the migration and release or
25 threatened release of such hazardous substances. In the event
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1 of such a major disturbance, Asarco shall provide to the present
2 or future owners or lessees of the sites listed in Attachment A
3 to this Consent Order the necessary services for: (1) testing
4 and disposal of excavated contaminated soils from such sites;
5 (2) transportation of excavated contaminated soils to Asarco's
6 on-site temporary storage facility provided that such
7 transportation will only be furnished until EPA's determination
8 that excavation and capping activities pursuant to the Response
9 Action Plan have been satisfactorily completed.

10 69. Asarco shall dispose of all contaminated soils
11 above 250 ppm arsenic pursuant to paragraph 40 of this Consent
12 Order. Asarco is not obligated under this Consent Order to
13 test, transport, or dispose of contaminated soils excavated by
14 persons other than Asarco at the sites listed on Attachment A to
15 this Consent Order unless the present or future owners or
16 lessees of such sites who undertake any activities which
17 constitute a major disturbance, such as an excavation which
18 breaches the protective cap, notify Asarco of such activities
19 (except where Asarco has knowledge of such activities), and
20 Asarco, subject to EPA's project manager's approval, determines
21 that such activities constitute a major disturbance of soil
22 which may present the release or threatened release of hazardous
23 substances. Subject to the provisions of paragraph 68; Asarco
24 shall provide such testing and disposal services until the
25 on-site disposal facility referenced in paragraph 40 is closed,
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1 or if that facility is not built, until completion of final
2 remedial action at the smelter complex. The long-term
3 responsibility for the testing, transportation, and disposal of
4 contaminated soil from the eleven sites addressed by this Order
5 shall be determined by EPA in consultation with Asarco and after
6 public comment, following completion of the RI/FS for the Ruston
7 residential areas.

8 XV. REIMBURSEMENT OF COSTS

9 70. After the end of each federal fiscal year in
10 which Asarco performs work under this Consent Order and Response
11 Action Plan, EPA will submit to Asarco a detailed accounting of
12 all costs, incurred by and/or billed to the United States after
13 the effective date of this Consent Order in connection with
14 response, oversight, and community relations costs and
15 activities conducted by the United States government and its
16 contractors and representatives with respect to the
17 implementation of this Order. For those costs incurred during
18 the previous fiscal year for which a detailed accounting is not
19 yet available or for which EPA has not yet been billed, EPA will
20 subsequently provide a supplemental statement of costs. Asarco
21 shall, within thirty (30) days of receipt, remit a certified
22 check or money order for the amount of all uncontested costs
23 made payable to the Hazardous Substance Superfund, with a copy
24 of such transaction sent to the EPA Project/On-Scene
25 Coordinator. Disputes concerning contested costs shall be
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1 resolved pursuant to the dispute resolution provisions of
2 paragraphs 50 and 51, herein. Remittances should specifically
3 reference the identity of this matter as the Ruston Expedited
4 Response Action and be addressed to:

5 Mellon Bank
6 U.S. Environmental Protection Agency Region 10
7 Attn: Superfund Accounting
8 P.O. Box 360903M
Pittsburgh, Pennsylvania 15251
with a copy of the transaction sent to:

9 Regional Hearing Clerk
10 Office of Regional Counsel
11 U.S. EPA, Region 10, SO-125
1200 Sixth Avenue
Seattle, WA 98101

12 71. Asarco shall, within thirty (30) days from the
13 date of issuance of this Consent Order, remit a certified check
14 or money order in the amount of five hundred thousand dollars
15 (\$500,000.00) to the address listed above in paragraph 70, as
16 partial payment for EPA's past CERCLA response costs in
17 connection with the Ruston/Vashon Island Superfund Investigation
18 and Study and related activities. EPA estimates that its past
19 response costs in connection with the Ruston/Vashon Island
20 Superfund Investigation and Study and related activities are
21 approximately one million six hundred dollars (\$1,600,000).
22 Such costs do not include, and are separate from, those costs
23 incurred by EPA, its agents or contractors in connection with
24 the RI/FS and related site stabilization activities being
25 performed by Asarco pursuant to the 1986 Consent Order and
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1 subsequent amendments. EPA reserves the right to demand and
2 collect from Asarco the unpaid balance of EPA's past response
3 costs and any future unpaid response costs in connection with
4 the Ruston/Vashon Superfund Investigation and Study and related
5 activities, the ongoing RI/FS and site stabilization activities,
6 or any other costs incurred by EPA, its agents or contractors in
7 connection with the Asarco Superfund investigation.

8 72. In addition to its partial reimbursement of EPA's
9 past CERCLA response costs in connection with the Ruston/Vashon
10 Superfund Investigation and Study, Asarco shall provide funding
11 not to exceed \$60,000 for a period of one year from the date of
12 EPA's issuance of a determination that Asarco has completed the
13 Ruston Expedited Response Action and complied with all
14 provisions of this Consent Order, to the Tacoma-Pierce County
15 Health Department for continuation of medical surveillance and
16 monitoring of urinary arsenic levels of children in the Ruston
17 area, and to provide the public with information related to the
18 monitoring program including advice and information concerning
19 personal hygiene or other methods of reducing exposure to
20 arsenic.

21
22 XXV. DELAY IN PERFORMANCE/FORCE MAJEURE

23 73. If any event occurs which causes delay in the
24 achievement of any of the requirements of this Consent Order,
25 Asarco shall promptly, but no later than within twenty-four (24)
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1 hours, notify EPA orally and shall, within five (5) days of such
2 event, notify EPA in writing of the nature of the delay, the
3 anticipated duration and cause of the delay, the measures taken
4 and to be taken by Asarco to prevent or minimize the delay, the
5 schedule by which Asarco intends to implement these measures,
6 and whether the delay may, in the opinion of Asarco, cause or
7 contribute to an endangerment to public health, welfare, or the
8 environment.

9 74. If Asarco demonstrates to EPA's satisfaction that
10 the delay or anticipated delay has been or will be caused by
11 circumstances beyond the control and despite the due diligence
12 of Asarco, the time for performance under this Order shall be
13 extended as appropriate. Circumstances or events beyond
14 Asarco's control include, but are not limited to: acts of God,
15 public enemy, unforeseen strikes or work stoppages, fire,
16 explosion, flood, tornado, earthquake, lightning, riot, sabotage
17 or war. If Asarco fails without good cause as determined by
18 EPA, to provide the notice to EPA required by paragraph 73, it
19 shall not receive an extension of time for performance of the
20 affected work. Neither increased costs or expenses of
21 performance of any requirements of this Order or changed
22 business or economic circumstances shall be considered
23 circumstances beyond the control of Asarco.

1 XXVI. STIPULATED PENALTIES

2 75. Stipulated penalties shall be paid by Asarco,
3 upon notification by EPA to do so, into the Hazardous Substance
4 Response Trust Fund according to the procedures described in
5 paragraph 70 above. Stipulated Penalties shall accrue upon the
6 failure of Asarco to meet the schedule specified in the Scope of
7 Work in the amounts as specified below, or upon written notice
8 from EPA to Asarco that a violation of any requirement of this
9 Order has occurred:

10 A. Failure to submit the Response Action Plan
11 in compliance with the requirements of this Order, or in
12 accordance with the schedule incorporated in the attached Scope
13 of Work (Attachment A): in the amount up to \$1,000 per day for
14 the first week of violation or delay, up to \$2,500 per day for
15 the second week of violation or delay, and up to \$5,000 per day
16 thereafter.

17 B. Failure to submit any reports or plans
18 required by the Removal Action Plan or Consent Order, including
19 monthly progress reports: in the amount up to \$500 per day for
20 the first week of violation or delay, up to \$1,000 per day for
21 the second week of violation or delay, and up to \$2,000 per day
22 thereafter.

23 C. Failure to commence, conduct, or complete on
24 time pursuant to the attached Scope of Work, removal operations
25 as described in the approved Removal Action Plan: in the amount
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1 up to \$2,000 per day for the first week of violation or delay,
2 up to \$5,000 per day for the second week of violation or delay,
3 and up to \$7,500 per day thereafter.

4 76. In the event that EPA requires Asarco to pay into
5 the Hazardous Substance Superfund the sums set forth above as
6 stipulated penalties, certified checks or money orders should be
7 made out to the Hazardous Substance Superfund and addressed to:

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9 Mellon Bank
10 U.S. Environmental Protection Agency Region 10
11 Attn: Superfund Accounting
12 P.O. Box 360903M
13 Pittsburgh, Pennsylvania 15251.

14 XXVII. OTHER EPA REMEDIES

15 77. The stipulated penalties set forth above do not
16 preclude EPA from electing to pursue any other remedies or
17 sanctions in lieu of stipulated penalties which may be available
18 to EPA pursuant to CERCLA by reason of Asarco's failure to
19 comply with any of the requirements of this Consent Order. Such
20 remedies and sanctions include a suit for statutory penalties as
21 authorized by Sections 106 and 109 of CERCLA, a federally-funded
22 response action, issuance of a unilateral order pursuant to
23 Section 106 of CERCLA, 42 U.S.C. § 9606, as amended, or a suit
24 for reimbursement of costs incurred by the United States
25 pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, as
26 amended. Where Asarco has paid stipulated penalties in
27 accordance with the procedures set forth in paragraphs 75 and 76

1 above, EPA will not object to Asarco's introduction of that fact
2 in mitigation of statutory penalties in a suit brought by EPA to
3 enforce any other statutory remedies or sanctions available to
4 it for Asarco's failure to comply with any of the requirements
5 of this Consent Order.
6

7 XXVIII. RESERVATION OF RIGHTS

8 78. Notwithstanding compliance with the terms of this
9 Consent Order, including Asarco's submission to EPA of the
10 Response Action Plan, Asarco is not released from any of its
11 liabilities for costs of any response actions outside the terms
12 of this Order taken by EPA respecting the facility, and EPA
13 reserves all rights and defenses pursuant to any available legal
14 authority that it may have related thereto.

15 79. EPA reserves the right to take any action
16 pursuant to CERCLA or any other legal authority, including the
17 right to seek injunctive relief, reimbursement, statutory
18 penalties, or punitive damages, and to undertake any further
19 removal, investigation, remedial, or other response activities
20 at the facility otherwise authorized by law. EPA reserves the
21 right to inspect the facility at any time under any applicable
22 law or regulation, and to enforce such laws or regulations.

23 80. Asarco, any parent corporation and any subsidiary
24 corporation, and directors, officers, employees or persons
25 connected thereto, agree not to petition the EPA Hazardous
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1 Substance Response Trust Fund pursuant to 42 U.S.C. § 9606(b)
2 for those response costs agreed to be undertaken as provided for
3 in this Order. Nothing in this Order precludes Asarco from
4 exercising its rights under 42 U.S.C. § 9613(f) to seek
5 contribution from any person who is liable or potentially liable
6 under 42 U.S.C. § 9607(a), or to seek indemnification from any
7 such person other than EPA or the Hazardous Substance Response
8 Trust Fund with respect to those response activities which
9 Asarco has agreed to undertake pursuant to this Order as
10 provided above.

11 81. EPA reserves the right to perform any portion of
12 the work consented to herein if not performed by Asarco in
13 accordance with the terms of this Consent Order, or to conduct
14 other investigations or undertake removal or remedial actions at
15 any time, except as otherwise provided in paragraph 65 of this
16 Consent Order. In addition, EPA reserves the right to seek
17 damages or reimbursement from Asarco or any other person for
18 such costs incurred by the United States government or any state
19 for actions outside of this Consent Order.

20 XXIX. OTHER CLAIMS

21 82. Nothing in this Order shall constitute or be
22 construed as a release from any claim, cause of action or demand
23 in law or equity against any person, firm, partnership,
24 corporation, or state or local governmental entity not a
25 signatory to this Order for any liability it may have arising
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1 out of or relating in any way to the generation, storage,
2 treatment, handling, transportation, disposal, release, or
3 threat of release of any hazardous substances, hazardous wastes,
4 pollutants, or contaminants found at, taken to, or taken from
5 the facility. This Order does not preauthorize or constitute
6 any decision on preauthorization of funds under
7 42 U.S.C. § 9611(a)(2).
8

9 XXX. OTHER APPLICABLE LAWS

10 83. All actions required to be taken pursuant to this
11 Consent Order shall be performed in accordance with the
12 requirements of all applicable local, state and federal laws and
13 regulations. Pursuant to Section 121(e) of CERCLA, 42 U.S.C.
14 9621(e), as amended, State and federal requirements which are
15 applicable or relevant and appropriate shall be included and
16 detailed in Asarco's Response Action Plan. As set forth in
17 Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), no federal,
18 state, or local permit shall be required for the portion of the
19 remedial or removal action conducted entirely onsite ("facility"
20 as defined in paragraph 24 of this Consent Order), where such
21 action is selected and carried out in compliance with Section
22 121(e) of CERCLA, this Consent Order, the Attached Scope of
23 Work, and Asarco's Response Action Plan as approved by EPA.
24 Off-facility disposal of hazardous substances, if required by
25 this Consent Order, shall comply with the EPA Off-Site Response
26
27
28

1 Action Policy dated May 6, 1985, 50 Fed. Reg. 45933 (November 5,
2 1985), as amended by EPA's November 13, 1987 "Revised Procedures
3 for Planning and Implementing Off-site Response Actions,"
4 Section 3004(d)(3) of the Resource Conservation and Recovery
5 Act, 42 U.S.C. § 6924(d)(3), and Section 121(d)(3) of SARA,
6 42 U.S.C. § 9621(d)(3), as amended.
7

8 XXXI. INDEMNIFICATION OF THE UNITED STATES

9 84. The United States, including its agencies,
10 officers, employees, and agents, shall not be liable for any
11 injuries or damages to persons or property resulting from acts
12 or omissions by Asarco, its officers, employees, receivers,
13 trustees, agents or contractors in carrying out activities
14 pursuant to this Consent Order; nor shall the United States be
15 deemed a party to any contract made by the Asarco or its agents
16 in carrying out activities pursuant to this Consent Order.
17 Asarco shall save and hold harmless the United States its
18 agencies, officers, employees, and agents, from, and shall
19 indemnify the United States against and for, any and all claims
20 or causes of action arising from or on account of acts or
21 omissions of Asarco, its officers, employees, receivers,
22 trustees, agents, or assigns, relating in any way to carrying
23 out activities pursuant to this Consent Order.
24

25 85. Asarco reserves any and all rights, causes, and
26 claims it may have against the United States, its agents,
27
28

1 employees, officers, contractor, and subcontractors, for any
2 liability, damages, costs, or expenses suffered or incurred by
3 the Asarco, its directors, officers, employees, shareholders,
4 agents, or assigns, arising from any acts or omissions by the
5 United States, its agents, employees, officers, contractors, or
6 subcontractors.

7
8 XXXII. COMMUNITY RELATIONS

9 86. Community relations activities relevant to the
10 implementation of this Order are the primary responsibility of
11 EPA and its representatives. Asarco shall provide appropriate
12 assistance upon EPA's request, and may undertake its own
13 community relations activities provided Asarco coordinates such
14 activities with EPA. EPA and Asarco further agree to cooperate
15 in the conduct of such activities.

16
17 XXXIII. PERSONS BOUND

18 87. This Consent Order shall apply to and be binding
19 upon the Asarco, its officers, employees, subsidiaries, agents,
20 successors, assigns, contractors, and consultants acting under
21 or for Asarco. Asarco remains obligated by this Consent Order
22 regardless of any change in ownership of the Tacoma smelter
23 complex, and regardless of its efforts made to carry out the
24 terms through agents, contractors and consultants.

1 XXXIV. NOTICE TO THE STATE

2 88. EPA has notified the state of Washington of this
3 action through its Department of Ecology, and has provided
4 Ecology the opportunity to review and comment on this Consent
5 Order by EPA. The state of Washington may be involved in the
6 initiation, development and selection of any response actions as
7 provided under Section 121 of CERCLA, 42 U.S.C. § 9621, as
8 amended.

9
10 XXXV. EFFECTIVE DATE

11 89. The effective date of this Consent Order shall be
12 the date on which it is signed and issued by the EPA Hazardous
13 Waste Division Director, Region 10. Not later than five (5)
14 calendar days after the effective date of this Order, Asarco
15 shall commence work in accordance with the attached Scope of
16 Work.

17
18 XXXVI. PUBLIC PARTICIPATION AND COMMENT

19 90. EPA first issued the Consent Order for public
20 comment and review on September 29, 1988. EPA provided
21 interested persons with the opportunity to file written comments
22 for a period of thirty (30) days from September 29. EPA also
23 held an informal public meeting on September 29 to answer
24 questions and respond to comments. Following the public comment
25 period, which was extended by EPA until November 4, 1988, EPA
26

1 prepared a responsiveness summary addressing the public
2 comments. As provided in paragraph 85 of the September 29,
3 1988, Consent Order, EPA further determined and notified Asarco
4 that it was necessary to modify and amend certain provisions of
5 the Order in response to such comments. Accordingly, the
6 September 29, 1988, Consent Order did not become effective or
7 binding on the parties. EPA and Asarco have subsequently agreed
8 to the modifications as set forth in this Order, which shall
9 hereby replace and supercede the September 29, 1988, Consent
10 Order for the Ruston Expedited Response Action.
11

12 XXVII. COMPUTATION OF TIME

13 91. Any time period schedules to begin on the
14 occurrence of an act or event shall begin on the day after the
15 act or event. If the final day of any time period falls on a
16 weekend or legal holiday, the time period shall be extended to
17 the next working day.
18

19 XXXVIII. AMENDMENTS

20 92. This Consent Order may be amended by mutual
21 agreement of EPA and Asarco. Agreed amendments to this Consent
22 Order shall be in writing and shall have as the effective date,
23 that date on which such amendments are signed by the EPA
24 Hazardous Waste Division Director, Region 10. The parties'
25 project coordinators and/or EPA's On-Scene Coordinator
26
27
28

1 designated in paragraphs 42 and 45 of this Order shall be
2 authorized, to extend by mutual written agreement, any date,
3 deadline or schedule in the attached Scope of Work or removal
4 work plans.
5

6 XXXIX. DISTRIBUTION OF ORDER

7 93. Asarco shall provide a copy of this Order and all
8 accompanying attachments, exhibits and schedules to all
9 contractors, sub-contractors, laboratories, and consultants
10 retained to conduct any portion of the work in excess of \$1,000
11 to be performed pursuant to this Order, not later than five (5)
12 calendar days after the effective date of this Order or date of
13 such retention, whichever is later.
14

15 XL. SATISFACTION OF ORDER

16 94. This Consent Order shall be deemed satisfied upon
17 receipt by Asarco of a written determination issued by EPA
18 stating to the effect that all provisions of this Consent Order,
19 including any additional tasks which EPA has determined to be
20 necessary pursuant to paragraph 65, have been satisfied.

21 The undersigned, by affixing signature below, hereby
22 represents that he has the authority to bind Asarco, its agents
23 and its employees.
24
25
26
27
28

1 STIPULATED, AGREED, AND
2 APPROVED FOR ISSUANCE

3 ASARCO INCORPORATED,

4 By: *[Signature]*

3-3-89

5 Date

6 for ASARCO Incorporated

7 IT IS SO ORDERED, this 8th day of March 1989.

8 UNITED STATES ENVIRONMENTAL
9 PROTECTION AGENCY

10 By: *[Signature]*

11 CHARLES E. FINDLEY, Director
12 Hazardous Waste Division
13 EPA Region 10

14 Presented by:

[Signature]

15 ALLAN B. BAKALIAN
16 Assistant Regional Counsel
17 EPA Region 10
18
19
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ATTACHMENT A

RUSTON EXPEDITED RESPONSE ACTION

SCOPE OF WORK

A general description of the work to be performed on the twenty "high use" sites is provided below. The purpose of the soil and debris removal, and subsequent placement of a soil cap, is to protect direct human contact and ingestion of arsenic contaminated soil and to prevent erosion and transport of contaminated soils. Site locations are shown in Attachment D to this Consent Order. Attached as Exhibit 1 to this Scope of Work is a list of known property owners and their property parcel numbers which constitute the sites to be addressed under this Consent Order. All sites listed below for action will have approximately the top three inches of soil and debris removed before placement of the soil cap.

<u>Site Number</u>	<u>Description of Work</u>
1	9 inch cap, hydroseed or asphalt cap
2	Site to be addressed during smelter site RI/FS
3	9 inch cap, hydroseed East end of #3 (764 ppm) only
4	12 inch cap, sod existing playfield
5	9 inch cap, hydroseed flatter slopes, fence along top of bank to west and along top of lower bank to the south and north
6	12 inch cap, hydroseed flatter slopes, fence continuing from site 5 and enclose ravine within eastern portion
7	No action
8	12 inch cap, hydroseed, except pond area, culvert stream
9	9 inch cap, hydroseed
10	No action, below action level
11	No action, below action level
12	Site to be addressed during smelter site RI/FS
13	No action, below action level
14	12 inch cap, hydroseed
15	No action
16	9 inch cap, hydroseed
17	12 inch cap, hydroseed except densely vegetated ravine in the NW corner
18	No action, below action level
19	12 inch cap, hydroseed or asphalt cap of existing playground
20	Fence except ravine; site to be addressed during smelter site RI/FS

The specific actions to be taken at these twenty sites will be fully described in the EPA-approved Response Action Plan. Work will be initiated on these sites as soon as practicable after completion of design plans and receipt of long-term access agreements, weather permitting. If, at any time, weather conditions prohibit work on the sites, Asarco's On-Scene Coordinator may elect to utilize the placement of temporary cover or use of another stabilizing technique in lieu of hydroseeding following installation of the cap. On sites where a temporary cover is utilized, this cover will be replaced with hydroseed or sod when weather permits hydroseeding. Existing asphalt, concrete, or sod areas will not be removed and are not included in the area where work will be performed.

Asarco will prioritize work on sites 6, 8, 14, 17 and 19 consistent with the receipt of long-term access agreements for those sites.

The characteristics of the actions to be completed on each site are described below:

- | | | |
|-------------|---|---|
| 9 inch cap | - | 6 inches of fill material, 3 inches of topsoil. |
| 12 inch cap | - | 9 inches of fill material, 3 inches of topsoil. |
| Fence | - | Six feet of chain link with top rail, permanently anchored posts. One gate per fenced area. |
| Asphalt cap | - | 4 inches subbase, 2 inches asphalt. |

The depths for the topsoil, soil and asphalt caps listed above are minimums and may be increased upon agreement of both On-Scene Coordinators.

Sites where capping is to be performed will be cleared of brush and vegetation to a depth of approximately 3 inches prior to capping. Trees with a diameter of 6 inches and greater will be removed only at the discretion of the On-Scene Coordinators.

The extent of total soil removal required to install the cap on each site will be at the discretion of Asarco's On-Scene Coordinator with the concurrence of EPA's On-Scene Coordinator. Each site may be graded to allow for a workable surface for installation of the cap. Where soil/vegetation removal is required for a particular site, this material will be transported to the Fine Ore Bins located on the Asarco smelter site for temporary storage. This location has a concrete floor and sides and is covered to limit rainwater infiltration. Its capacity is estimated at over 30,000 cubic yards which is well in excess of the expected volume of soil to be removed.

PROJECT SCHEDULE AND DELIVERABLES

Work will be conducted according to the following schedule:

<u>WORK ITEM</u>	<u>DATE</u>
Site Evaluation Plan *	Previously submitted and approved by EPA.
Draft Response Action Plan *	Previously submitted to EPA; draft RAP will be updated within two weeks of EPA approval of the Consent Order to reflect sites for which temporary access agreements have been received since the draft RAP was submitted to EPA. The RAP will be supplemented with regard to remaining sites within two weeks of the receipt of temporary access agreements for those sites.
Final Response Action Plan *	Two weeks after receipt of written comments from EPA on the draft RAP.
Complete Design for Sites for which temporary access agreements have been received	Two weeks after receipt of written approval from EPA of final RAP for those sites where Asarco has received temporary access, or two weeks after receipt of temporary access agreements for those sites where Asarco has not yet received access at the time EPA approves the RAP.
Start Construction for Sites for which long-term access agreements have been received	Six weeks following approval of RAP by EPA, or two weeks following receipt of long-term access agreements for at least five sites, whichever is later.

WORK ITEM

DATE

Complete Construction at
each Site

Eight weeks from start of
construction on that
Site.

Final Report *

Four weeks after
completion of
construction at all
sites.

Monthly Report *

10th Day of Each Month

* Denotes deliverable to EPA

RUSTON PUBLIC ACCESS PROPERTY OWNERS

March 6, 1989

LOT # OWNER/ADDRESS/PARCEL NUMBER: LEGAL DESCRIPTION

1

(b) (6)

Tacoma, WA 98403

465510-007-0: Howard Heights Annex L 10 & 11

465510-008-0: Howard Heights Annex L 12 & 13

Tacoma Narrows Federal Credit Union

4319 N. 51st Street, Tacoma, WA 98407

465510-004-0: Howard Heights Annex L 5

Town of Ruston

5117 N. Winnifred Street, Ruston, WA 98407

465510-005-0: Howard Heights Annex L 6 & 7

(b) (6)

, Shelton, WA 98584

465510-006-0: Howard Heights Annex L 8 & 9

(b) (6)

(b) (6), Surrey, BC C3F 4N7 Canada

465510-010-0: Howard Heights Annex L 16 & 17

022123-1-019:

022123-1-020: Legals Attached

022123-1-024:

3

(b) (6)

Gig Harbor, WA 98335

275500-008-0: Budnich Add L 8 thru 13 B 2 less
tunnel rts

Glacier Park Company/Burlington Northern Railroad Co.
Attn. Jan Bostick, 1011 Western Avenue, Suite 700,
Seattle, WA 98104

275500-001-0: Budnich Add L 1 thru 11 B 1

275500-008-0: Budnich Add L 4 thru 7 B 2

4

Town of Ruston

5117 N. Winnifred Street, Ruston, WA 98407

305000-005-0: Clark's Add L 1 thru 3 B 2

022123-1-001:

022123-1-003: Legals Attached

022123-1-004:

Burlington Northern Railroad Co.
1511 6th Ave., Seattle, WA 98101
022123-1-042: Legal Attached
(Numbers 290568 and 217534)

5 Town of Ruston
5117 N. Winnifred St., Ruston, WA 98407
236500-001-0: Bay View Add to Ruston L 1 B 1
236500-002-0: Bay View Add to Ruston L 2 thru 8 B 1
236500-003-0: Bay View Add to Ruston L 9 thru 11 B 1

6 Town of Ruston
5117 N. Winnifred St., Ruston, WA 98407
236500-018-0: Bay View Add to Ruston L 1 thru 12 B 6
236500-019-0: Bay View Add to Ruston L 1 thru 4 B 7
236500-021-0: Bay View Add to Ruston L 9 thru 12 B 7

8 (b) (6)
P. O. Box 73130, Puyallup, WA 98443
022123-1-005: Legal Attached

Town of Ruston
5117 N. Winnifred St., Ruston, WA 98407
022123-1-072: Legal Attached

(b) (6)
Federal Way, WA 98023
022123-1-073: Legal Attached
022123-5-003: Lot 1 P.C. Short Plat 86-02-27-0153

(b) (6)
, Tacoma, WA 98407
236500-035-1: Bay View Add to Ruston W 1/2 L 3 All L
4 & 5 B 13

(b) (6)
Seattle, WA 98118
236500-036-0: Bay View Add to Ruston L 6 & 7 B 13

9 Trading Bay Builders, Inc.
4141 Apollo Drive, Anchorage, AK 99504
(Atty. James T. Stanley, 555 West Northern Light
Bldg., Suite 209, Anchorage, Alaska 99503)
236550-32-0: Bay View Add to Ruston L 9 B 12
236550-33-0: Bay View Add to Ruston L 10 & 11 B 12

(b) 1 [REDACTED]
(6) [REDACTED] Tacoma, WA 98406
236500-031-0: Bay View Add to Ruston L 6 thru 8 B 12

(b) (6) [REDACTED]
[REDACTED], Watsonville, CA 95076
236500-028-0: Bay View Add to Ruston L 1 thru 3 B 12
236500-030-0: Bay View Add to Ruston L 4 & 5 B 12

14 (b) (6) [REDACTED]
[REDACTED] Tacoma, WA 98407
(Atty. James Orlando, 818 South Yakima, Tacoma, WA
98402)
659520-008-0: Outlook 2nd Add L 1 thru 10 B 12

16 (b) (6) [REDACTED]
[REDACTED] Tacoma, WA 98407
767500-030-1: Smelter Add L 11 thru 14 B 5
410500-068-1: Gills Seaview Park Add L 1 thru 12
B 14

First Interstate Bank of Washington (Trust)
Attn: Ms. Jo Pigg
P.O. Box 1977, Tacoma, WA 98401
767500-028-0: Smelter Add L 9 & 10 B 5

17 (b) (6) [REDACTED]
[REDACTED] Santa Maria, CA 93454
767500-034-0: Smelter Add L 7 B 6
767500-035-0: Smelter Add L 8 B 6
410500-003-0: Gills Seaview Park Add L 11 thru 13
B 1

Puyallup Valley Bank
P.O. Box 578, Puyallup, WA 98371
and J.H. Epperson
6836A M Street, Tacoma, WA 98499
767500-036-0: Smelter Add L 9 & 10 B 6

(b) (6) [REDACTED]
(b) (6) [REDACTED] Tacoma, WA 98499
767500-037-1: Smelter Add L 11, 12 & W 15 ft of 13
B 6

City of Tacoma

Attn: Mr. Robert Gower, 747 Market St., Suite 444,
Tacoma, WA 98402

410500-001-1: Gills Seaview Park Add L 1 & 2 B 1

410500-005-1: Gills Seaview Park Add L 1 & 2 B 2

767500-039-2: Smelter Add L 16 & 17 B 6

Pierce County Tax Title

2401 S. 35th Street, Tacoma, WA 98409

Attn: Mr. Robert Dick, Deputy Prosecuting Attorney
930 Tacoma Avenue South, Tacoma, WA 98401

410500-001-2: Gills Seaview Park Add L 3 thru 9 B 1

410500-002-0: Gills Seaview Park Add L 10 B 1

(b) (6)

, Tacoma, WA 98406

410500-005-2: Gills Seaview Park Add L 3 thru 5 B 2

410500-006-0: Gills Seaview Park Add L 6 thru 13 B 2

410500-007-0: Gills Seaview Park Add L 14 B 2

19

Town of Ruston

5117 N. Winnifred St., Ruston, WA 98407

465520-001-0: Howard Heights 2nd Add L 1 thru 10 B 1

465520-019-0: Howard Heights 2nd Add L 1 thru 14 B 4

Beginning at the northwest corner of the southeast quarter of the southwest quarter of the northeast quarter of Section 23, Township 21 North, Range 2 east, Willamette Meridian; Thence south 89 degrees 24 minutes 30 seconds east along the extended south line of Block 1 of Clark Addition according to plat thereof, recorded on November 11, 1888 under Volume 2, page 69, records of Pierce County, Washington, A distance of 26 feet to the true point of beginning; thence continuing east along the the south line of said plat a distance of 238 feet to the southeast corner of Block 1 of Clark Addition; thence south 00 degrees 12 minutes west a distance of 30 feet; thence north 89 degrees 24 minutes 30 seconds west a distance of 78.26 feet, more or less, to the northeast corner of Lot 1 of Short Plat No. 8306090180; thence north 00 degrees 12 minutes east a distance of 15 feet; thence north 89 degrees 24 minutes 30 seconds west a distance of 160 feet to the east line of Winnifred Street; thence north along the east line of said Right of Way a distance of 15 feet to the true point of beginning.

Situate in the County of Pierce, State of Washington.

02-21-23-1-073

In Section 23, Township 21 North,
Range 2 East of the W.M.

Beginning at the Northwest corner
of the Southeast (1/4), quarter of the
Southwest (1/4), quarter of the
Northeast (1/4), quarter of section
(23), twentythree, Township (21),
twentyone North, Range (2), two East
of the Willamette Meridian; thence,
South 89°24'30" East for 26 feet,
thence, South 0°12' West for 15 feet
for the true point of beginning of
this description. Thence;

South 89°24'30" East for (160),
One Hundred and Sixty Feet, thence
South 0°12' West for (15), fifteen
feet, thence North 89°24'30" West for
(160), One Hundred and Sixty Feet to
the East line of North Winnefred
Street in the Town of Ruston,
Washington, thence North along the
East line of said Winnefred street for
(15), fifteen feet to the true point
of beginning of this property
description.

Situate in the County of Pierce,
State of Washington.

02-21-23-1-072

All that tract of land lying and being in the Town of Ruston, being a portion of the East half of the Southwest quarter of the Northeast quarter of Section 23, Township 21 North, Range 2 East of the Willamette Meridian, and more particularly described as follows:

Beginning at the Northwest corner of the Southeast quarter of the Southwest quarter of the Northeast quarter of Section 23, Township 21 North, Range 2 East of the W.M.; thence south 89 degrees 24 minutes 30 seconds east along the south line of Block 1, Map of Clark's Addition to Tacoma, Washington Territory, according to the Plat thereof recorded in Volume 2 of Plats at Page 69, for 264 feet to the Southeast corner of said Block 1, the true point of beginning; thence South 89 degrees 24 minutes 30 seconds east 392.39 feet; thence South 00 degrees 10 minutes 22 seconds West 290.11 feet; thence South 59 degrees 26 minutes West 65.84 feet; thence North 89 degrees 24 minutes 30 seconds West 414.00 feet; thence North 00 degrees 12 minutes East 294.17 feet; thence South 89 degrees 24 minutes 30 seconds East 78 feet; thence North 00 degrees 12 minutes East 30 feet to true point of beginning.

Situate in the County of Pierce, State of Washington.

- A. A parcel of land commonly known as "Tract Number Four" described as follows:
Commencing sixteen (16) rods east of the northwest corner of the northeast quarter of the southwest quarter of the northeast quarter (NE 1/4 of SW 1/4 of NE 1/4) of Section twenty-three (23), Township twenty-one (21) North of Range two (2) East; Willamette Meridian, and running thence east eight (8) rods; ** thence north twenty (20) rods to the place of beginning, containing one (1) acre, more or less.

Situated in the County of Pierce, State of Washington.

- ** thence south twenty (20) rods, thence west eight (8) rods;

- B. Beginning at the Northeast (NE) corner of Southwest (SW 1/4) quarter of the Northeast quarter (NE 1/4) of Section Twenty three (23) Township Twenty-one (21) North Range Two (2) East, thence West Eight (8) Rods, thence South Twenty (20) Rods, thence East Eight (8) rods, thence North Twenty (20) rods to the place of beginning, containing One (1) acre more or less. Pierce County, Washington.

022123-1-042

- A. Beginning 8 rods West and 10 rods South of the Northeast corner of the Southwest quarter (1/4) of the Northeast quarter (1/4) of Section 23, Township 21 North, Range 2 East, W.M.; thence West 6 rods, thence South 10 rods, thence East 8 rods, thence North 10 rods to the point of beginning. Pierce County, Washington.
- B. Beginning at the Northeast corner of Block 2, Map of Clark's Addition to Tacoma, W.T., in Section 23, Township 21 North, Range 2 East, W.M.; thence East 132 feet, thence South 123.5 feet, thence West 132 feet, thence North 123.5 feet to the point of beginning. Pierce County, Washington.
- C. Beginning 330 feet South of the Northeast corner of the Southwest quarter (1/4) of the Northeast quarter (1/4) of Section 23, Township 21 North, Range 2 East, W.M.; thence West 264 feet, thence South 118.5 feet to the North line of Commencement Street produced Easterly, thence East 264 feet, thence North 118.5 feet to the point of beginning. Pierce County, Washington.

022123-1-001
022123-1-003
022123-1-004

Beginning at the southeast corner of Lot 17, Howard Heights Annex; thence along the northerly line of J.O. Jelleberg County Road now known as No. 51st Street in the Town of Ruston, North 56°30' East 75.29 feet; thence continuing on said northerly line of No. 51st Street, North 69°23' East 14.71 feet to the true point of beginning for this description; thence North 20°33' West 85.38 feet to a continuation East of the north line of said Howard Heights Annex at a point 130.29 feet East of the northeast corner of said Howard Heights Annex; thence East of said continuation of said north line, 1.61 feet; thence on a line parallel with and 110.0 feet northeasterly, when measured at a right angle, from the northeasterly line of said Lot 17, South 33°30' East 87.01 feet to said northerly line of North 51st Street; thence along said northerly line South 69°23' West 20.89 feet to true point of beginning, Pierce County, Washington.

02-21-23-1-024

Beginning at the most Easterly corner of Lot 17 of HOWARD HEIGHTS ANNEX, as per plat recorded in Volume 7 of Plats, page 48, records of Pierce County; thence Northwesterly on the Northeasterly line of said Lot 17, a distance of 120 feet to the Northeast corner thereof; thence Northeasterly at right angles to the Northeasterly line of said Lot 17, being a continuation of the Northwesterly line of said Lot, 48.15 feet to an intersection with the North line of that certain tract of land conveyed to Tacoma Smelting and Refining Company by Deed recorded in Book 47 of Deeds at page 413 under Auditor's File No. 32794, records of said County at a point 57.74 feet East of the Northeast corner of said HOWARD EIGHTS ANNEX; thence East on the North line of said tract of land conveyed to Tacoma Smelting & Refining Company, a distance of 74.16 feet; thence South 33°30' East along a line parallel with and 110 feet Northeasterly from the Northeasterly line of said Lot 17, a distance of 87.51 feet to the Northwesterly line of North 51st St. (J.O. Jelleberg County Road); thence South 69.23 West along said Northerly line, a distance of 35.60 feet; thence continuing along the Northerly line of said North 51st Street, South 56°30' West 75.29 feet to the point of beginning.

All situate in the Town of Ruston, County of Pierce, State of Washington.

02-21-23-1-019

02-21-23-1-020